



September 10, 2001

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2001-3998

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151702.

The City of Laredo (the "city") received two requests for work attendance records and one request for the "computerized hours detail screen from the AS-400 and the check detail history" regarding six named individuals for three particular pay periods. One of the requestors also asks to inspect the Texas Narcotics Control Program grant. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim.

Initially, we note that you did not submit the Texas Narcotics Control Program grant. Therefore, to the extent such information exists, we assume that you have released it to the requestor who has asked to inspect it. If you have not released any such information, you must release it at this time to the requestor who has asked to inspect it. *See* Gov't Code §§ 552.301(a), .302. Because you have not submitted this information, we have no basis for finding it confidential. *See* Gov't Code § 552.352. Thus, we have no choice but to order any such information released, to the extent it exists, per section 552.302 of the Government Code. If you believe any such information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

Next, we address your arguments with respect to the remaining requested information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by common law privacy.¹ *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 344 at 2 (1982).

Ordinarily, information is protected by common law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *Id.* at 685. However, information also may be withheld under section 552.101 in conjunction with common law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In this instance, the requestors seek information regarding six individuals alleged to be members of the city's Narcotics Task Force. You contend that releasing any responsive information regarding the named individuals "would serve to confirm the requestor's allegation, that the named officers are, in fact, undercover drug enforcement officers of the Laredo Narcotics Task Force." You further argue that the release of any such responsive information would likely endanger the lives of any such undercover officers. Because of your handling of the requested information and the particular circumstances present in this request for a decision, we conclude that, in this instance, any responsive information regarding the named individuals is confidential under section 552.101 in conjunction with common law privacy and must be withheld.² *See* Open Records Decision No. 169 (1977).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental

²As we are able to make this determination, we need not address your claimed exceptions.

body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 151702

Enc: Submitted documents

c: Mr. Robert Garcia
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